AFR No. 183

HIGH COURT OF CHHATTISGARH AT BILASPUR

Writ Petition No.61 of 1996

Petitioners:

1. Anil Shrivastava S/o Late L.P. Shrivastava aged about 30 years, Sub-Engineer
2. Sanjay Kumar Tungidwar, S/o Shri. T.A. Tungidwar, aged about 32 years, Sub-Engineer
3. T.P. Sirmour S/o Late B.B. Sirmour, aged about 34 years, Sub-Engineer
4. B.P. Verma S/o Shri B.R. Verma, aged about 29 years, Sub-Engineer
5. Sanjay Kumar Sharma, S/o Shri Ram Sajiwan Sharma, aged about 30 years, Telephone Operator
6. Niranjan Sharma, S/o Shri R.K. Vyas, aged about 30 years, Telephone Operator
7. Shriniwas Khoshla, S/o late R.K. Khoshla, aged about 33 years, Time Keeper
8. K.K. Arya S/o Late Atma Ram Arya, aged about 39 years, Time Keeper
9. Rakesh Kumar Sharma, S/o V.P. Sharma, aged about 30 years, Time Keeper
10. G.P. Rajak, S/o Shri Gulab Singh Rajak, aged about 42 years, Work Mistry
11. Brijesh Kumar Choubey S/o Shri K.P. Choubey, aged about 45 years, Work Mistry

S. No. 1 to 11 Care of the Registrar, Indira Gandhi Krishi Vishwa Vidyalaya, Krashak Nagar, Raipur.

Versus

Respondents:

1. Indira Gandhi Krishi Vishwa Vidyalaya, Raipur, through the Vice Chancellor being the Chief Executive Officer.
2. Jawaharlal Nehru Krishi Vishwa Vidyalaya, Jabalpur, through the Vice Chancellor being the Chief Executive Officer
3. State of Madhya Pradesh through the Secretary, Higher

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Education Department,
Vallabh Bhawan, Bhopal (M.P.)

Single Bench: Hon'ble Mr. Justice **Satish K. Agnihotri**.

Shri T.K. Tiwari, Counsel for the petitioners.

Shri Manindra Shrivastava, Learned Senior Counsel with Shri Amit Verma, Counsel for the Respondents No. 1 and 2.

Shri Pankaj Shrivastava, Counsel for the Respondent No. 3.

ORAL ORDER

(16th January, 2006)

The following order of the Court was passed by **Satish K. Agnihotri, J.**

1. The petitioners were appointed by order dated 23.09.1992 (Annexures A to E) on various posts on work charge/adhoc/temporary basis. The petitioners were posted accordingly. By order dated 5.12.1992 (Annexure F), appointment orders of all the petitioners were kept in abeyance till the creation/sanction order was to be released by the Government. It was further stated in the impugned order dated 5.12.1992, that the appointment of the petitioners were subject to creation/sanction of the posts by the Government and no post has been sanctioned/created, therefore, appointment orders of the petitioners were kept in abeyance. Learned counsel for the petitioner submits that the impugned order dated 5.12.1999, whereby the appointments has been kept in abeyance amounts to termination of the services of the petitioners. No attempt was made for creation/sanction of the posts of the petitioners. The petitioners filed this petition impugning the order dated 5.12.1992 (Annexure F) seeking directions against the respondents No. 1 and 2 for restoring the appointment orders

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dated 23.09.1992 (Annexure A to E). It was pointed out that during the pendency of the petition an enquiry was held wherein it was found that the appointment of the petitioners was not in accordance with law and as such, the termination orders against the petitioners were passed on 29.04.1998 (Annexure L).

2. The petitioners, by way of an application, amended the prayer to the effect that the impugned termination order dated 29.04.1998, cancelling the appointment order dated 23.09.1992, be quashed. This Court, by way of order dated 23.09.1996, granted status quo as on that day with regard to the services of the petitioners. Accordingly they continued to work.

3. Shri T.K. Tiwari, learned counsel appearing for the petitioners submits that the services of the petitioners were regularized and subsequently the impugned order dated 5.12.1992 keeping appointment orders in and the order dated 29.04.1998, cancelling the appointment order dated 23.09.1998, were passed without giving an opportunity of hearing to the petitioners. The impugned orders involved civil consequences and no order which visit with penal consequences can be passed without giving show cause notice and without giving an opportunity of hearing to the employees to put up their cases.

4. Shri Manindra Shrivastava, learned Senior Counsel with Shri Amit Verma, learned counsel, appearing for the respondent No. 1, submits that in the present case, it has been found in the internal enquiry that the entire selection process was improper, illegal and not in accordance with law. It was further contended that when

the entire selection process itself was quashed, it is well settled principle of law, that no individual notice is necessary.

5. Shri Pankaj Shrivastava, learned counsel appearing for the respondent No. 3, adopts the submissions made by Shri Manindra Shrivastava, learned Senior Counsel, appearing for the respondent No. 1.

6. I have heard learned counsel for the parties and perused the records appended to the petition as well as to the return.

7. It is evident, that the petitioners were appointed on adhoc/work-charge/temporary basis, on various posts on a particular pay-scale. The appointment on regular pay-scale means that the appointment was made on regular basis. Even the subsequent order dated 5.12.1992; (Annexure F) also indicates that the appointments were kept in abeyance waiting for sanction/creation of the posts by the Government. The appointment orders were not quashed but kept in abeyance, which clearly establishes that the appointments made was on regular basis, not on daily wages/work-charge/temporary basis, as the creation of posts is not required for appointing an employee on daily wages/work-charge/temporary basis. These types of appointments are made keeping in view the requirements of work for a particular period. Reading of appointment orders as well as the abeyance order dated 5.12.1992, makes it clear that the appointments were contemplated to be made against regular posts. The appointment of the petitioners on regular basis were kept in abeyance but allowed the petitioners to continue on daily

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wages/adhoc/work-charge/temporary basis, as admitted by learned Senior Counsel Shri Manindra Shrivastava.

8. The internal enquiry culminated into the cancellation of the appointment order dated 23.09.1992, by order dated 29.04.1998. The petitioners have worked for about three months on regular basis but prior to that they have been working as daily wages/ work charge/temporary basis. By virtue of order dated 23.09.1996 passed by this Court, the petitioners have been working on daily wages/work-charge/temporary basis. Since an opportunity of hearing was not given to the petitioners before cancelling the appointment of the petitioners on regular basis, the impugned orders dated 5.12.1992 (Annexure F) and 29.04.1998 (Annexure L), are quashed and set aside.

9. For the reasons stated above, this petition is allowed, and the respondent No. 1 is directed to consider the cases of the petitioners for regularization, in accordance with law, within a period of three months from the receipt/production of copy of the order. No order as to costs.

Sd/-
Satish K. Agnihotri
Judge

Arun